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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/022,336    02/11/98    JONES

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IM22/1018

EXAMINER

MAPLES, J

ART UNIT

PAPER NUMBER

1745

DATE MAILED:

10/18/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/023336

Applicant(s)

JONES ET AL

Examiner

JOHN J. MAPLES

Group Art Unit

1745

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 6/23/00
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-6, 7-9, 13, 14-25, 27-30, 31, 32-42 ~~is/are~~ pending in the application.
- Of the above claim(s) 1-6, 31 ~~is/are~~ withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 7-9, 13, 14-25, 27-30, 32-42 ~~is/are~~ rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 1745

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims <sup>K66P</sup>15 and ~~16~~ are rejected under 35 U.S.C. 102(b) as being anticipated by Catylators Limited (CL).

See page 1, lines 16-60 along with page 3, lines 9-15 along with all of the drawing figures of CL.

Applicant's arguments have all been considered but are not deemed persuasive. Applicant argues that CL does not disclose a flame arresting feature. The examiner respectfully disagrees. Even though CL does not specifically state that a portion of the catalyst housing is flame arresting, the fact that layer 2 surrounds the catalyst in CL meets this claimed recitation. This layer 2 in CL is a ceramic, which material is flame arresting. This material is exactly what applicant claims in claim 16 and therefore the claimed subject matter is met by CL.

3. Claims ~~15, 17, 23~~ and ~~40, 42~~ are rejected under 35 U.S.C. 102(b) as being anticipated by Marui et al.-USP 3,832,238. (Marui) (New Rejection)

Art Unit: 1745

Reference is made to column 2, lines 38-41 along with column 5, lines 9-54 of Marui.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims ~~7-9, 12, 14-30, 32-42~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over German ~~2904842~~ (Ger'842) in view of Marui. (New Rejection)

Ger'842 teaches all of the claimed subject matter except for the PTFE film providing an encasement around the catalyst container, the size and the pore size of said

Art Unit: 1745

film, the epoxy sealer and the size of the container. As described previously in this action, Marui sets forth a PTFE layer surrounding a catalyst chamber. To include in the teachings of Ger'842, the PTFE layer of Marui would have been obvious to allow the gases to penetrate into the catalyst but to allow the water vapor and water to return back to the electrolyte. The use of epoxy as a sealer in the battery of Ger'842 would have been obvious because the same is known for its strong sealing and bonding properties. Finally, the recitation of the size of the film, the size of the pores in said film and for the size of the container are all deemed obvious design expedients to one of ordinary skill in this art. In any event, the courts have ruled that size is not a patentable feature, see In re Aller, 105 USPQ 233.

The remainder of applicant's arguments are deemed moot in view of the above new grounds of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is (703) 308-1795. The examiner can normally be reached on Monday-Friday from 6:30 to 4:00. The examiner can also be reached on alternate Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's temporary supervisor, Carol Chaney, can be reached on (703) 305-3777. The fax phone

Art Unit: 1745

number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

JSM/October 17, 2000

*John S. Maples*  
JOHN S. MAPLES  
PRIMARY EXAMINER  
GROUP 1745